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B.F. "CHRIS" CHRISTIAENS  
VICKI COCCHIARELLA  
MACK COLE  
STEVE DOHERTY  
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KIM GILLAN - VICE  
CHAIRMAN  
GEORGE GOLIE  
DOUG MOOD  
BRAD NEWMAN  
MARK NOENNIG  
PAUL SLITER

# Montana Legislative Council

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## MINUTES

**June 25, 2001**

**Room 137, State Capitol  
Helena, Montana**

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

### **COMMITTEE MEMBERS PRESENT**

Sen. Tom Beck (Chairman)  
Rep. Kim Gillan (Vice-chairman)  
Sen. Chris Christiaens  
Sen. Vicki Cocchiarella  
Sen. Mack Cole  
Sen. Fred Thomas  
Rep. Paul Sliter  
Rep. Doug Mood  
Rep. George Golie  
Rep. Mark Noennig

### **COMMITTEE MEMBERS ABSENT**

Sen. Steve Doherty  
Rep. Brad Newman

### **STAFF PRESENT**

Lois Menzies, Executive Director, Legislative Services Division (LSD)  
Dave Bohyer, Director of Office of Research & Policy Analysis, LSD  
Hank Trenk, Director, Office of Legislative Information Technology, LSD  
Karen Berger, Fiscal Services Manager, LSD  
Larry Mitchell, Resource Policy Analyst, LEPO

Valencia Lane, Legislative Attorney, LSD  
Carol Ann Jacobsen, Senior Editor, LSD  
Ellen Garrity, secretary  
Jim Kerins, Human Resources Consultant

### **COMMITTEE ACTION**

- ? Accepted the proposal to convert certain informational technology (IT) contracted resources into permanent staff. Staff is directed to return to the Council before any future conversion of IT staff. (Cocchiarella)
- ? Authorized LSD legal staff to continue to represent legislators named in Single Moms, Inc. v. MPC until the issue of immunity is resolved and to advise the Council on whether sanctions or legal fees ought to be sought to cover the cost of defense. (Noennig)
- ? Agreed that the Chairman appoint a subcommittee to study the issue of appointments to interstate committees and participation in interstate and international activities and to present recommendations at the next Council meeting. (Cocchiarella)
- ? Agreed that, unless specifically authorized by a majority vote of the Legislative Council, September 15 prior to any regular legislative session will be the deadline for completing interim committee work. (Sliter)
- ? Agreed that the Chairman appoint a subcommittee to study the proposed guidelines for interim committees, excluding the previously approved proposal on the September deadline for interim committees. The subcommittee will also consider operating procedures for interim committees and present recommendations at the next Council meeting. (Sliter)
- ? Agreed that Joe Mazurek, Ed Eck, and James Nelson be reappointed as Uniform State Law Commissioners. (Sliter)
- ? Declined to authorize payment of legislators' salaries for participating in the Supreme Court's Judicial Education Program and encouraged the program to seek advice through the Law and Justice Interim Committee. (Sliter)

### **CALL TO ORDER AND ADOPTION OF MINUTES**

Chairman Tom Beck called the meeting to order at 1 p.m.

The minutes of the May 18, 2001, meeting were approved as corrected. On page 5, on the vote on HJR 39, the minutes should read Rep. Newman voted no and Rep. Mood voted yes.

## **INTRODUCTION OF NEW STAFF**

Lois Menzies introduced Karen Kueffler, administrative clerk and Jennifer Murray, accounting technician.

## **RULES OF PROCEDURE**

Exhibit #1 – Rules of Procedure

Ms. Menzies distributed the Legislative Council's Rules of Procedure as amended at the May Council meeting.

## **CONVERSION OF SELECTED INFORMATION TECHNOLOGY (IT) CONTRACTED SERVICES**

Exhibit #2 – Proposal for Converting IT Contracted Services to State FTE

Hank Trenk, Director, Office of Legislative Information Technology, LSD, said staff is proposing to convert one network support position and the Web administration position to full-time employees. He recommended the conversion because it will save money and maintain pay equity among staff. In addition, using contracted services for ongoing services is not a wise use of contracted services.

Sen. Christiaens asked what the salaries of the two positions will be and if staff will request a pay exception. Mr. Trenk said IT staff has been given pay exceptions in the past, and management may have to do that again to maintain IT staff.

Sen. Christiaens said the Department of Administration (DofA) is going to study this entire issue and asked if the Legislative Services Division is coordinating with DofA. Jim Kerins said he is conducting a market study using a major market survey group through the State Personnel Division. Information Services Division has gone from the old state plan with statutory market rates to a broad band pay plan on which market rates are set for positions based on the actual market rates. Taking some of the cost savings and targeting them where needed to retain present employees will save money as opposed to contracted services.

Ms. Menzies said this proposal comes from the former Computer Systems Planning Council, a group created by statute, which now consists of the three legislative agency directors, Rep. Brueggeman, Rosanna Skelton, Chris Ahner and Chuckie Cramer.

Rep. Cocchiarella moved to accept the proposal as presented. Staff was directed to come back to the Council before any future conversion of IT staff. The motion passed unanimously.

## **COMPENSATORY TIME STATUS REPORT**

### **Attachment #1 – Legislative Services Division Compensatory Time Status**

Ms. Menzies said she is required by the Legislative Branch Administrative Manual to provide the Council with a report on staff compensatory time by June 30 of each year. Attachment #1 is the report.

Ms. Menzies said it continues to be a struggle to ensure that employees use their compensatory time. On May 31, she asked each staff with excess compensatory time to prepare a plan for using the time. Most of those plans have been submitted and approved by LSD managers.

Sen. Christiaens asked if compensatory time is pre-approved. Ms. Menzies said typically it is not. Managers have found that their employees are working overtime only when necessary. However, employees may not work more than 70 hours a week without a supervisor's approval.

Chairman Beck asked how compensatory time in the 2001 Session compared with the previous session. Karen Berger said she would get that information.

Rep. Mood asked for the formula for cumulating compensatory time. Ms. Menzies said that after 40 hours per week, an employee earns one hour of comp time for one hour worked, except for employees who are nonexempt and choose to accumulate comp time. They accumulate 1 ½ hours of comp time for each hour worked.

Karen Berger said that three or four nonexempt LSD employees are being paid compensatory time at time and one-half, and their balances are very low.

## **SALARY ADJUSTMENTS FOR LEGISLATIVE SERVICES DIVISION STAFF**

Ms. Menzies said Legislative Branch employees will be eligible for two different salary adjustments during this biennium. The first is defined in HB 13, which is an across-the-board salary increase of 4% each year of the biennium, similar to the salary increase provided for the executive branch. Increases will be granted in October 2001 and October 2002. The second is a market-based adjustment funded in HB 13, which appropriated \$434,500 to the Legislative Branch. The purpose of the appropriation is to move employees closer to the statutory market. On an average, branch employees are 83% of market.

The three branch directors have met several times since late April to discuss the best method for distributing funds among divisions and within each division. Directors are considering adopting a target market ratio for each employee based on years of service. Ms. Menzies said she will continue to update the Council on the salary adjustments.

Sen. Cole asked if the appropriation is adequate to make the adjustments. Ms. Menzies said the

appropriations will not bring everyone up to his or her target market ratio.

## **REPORT FROM LEGISLATIVE COUNCIL'S MANAGEMENT ADVISORY**

### **SUBCOMMITTEE**

Jim Kerins reported on the morning meeting of the Management Advisory Subcommittee. He said the Subcommittee discussed the performance management process for the executive director. A draft of the performance appraisal is completed. The Subcommittee will reconvene sometime in August to revise the appraisal form and initiate the formal appraisal period – September to September. The process has some flexibility in that the Council can conduct a performance appraisal annually or every two years. The Subcommittee also discussed gathering feedback from staff to help assess Ms. Menzies' performance.

The Subcommittee has directed Ms. Menzies to put together a report of some of her major accomplishments and goals that have been met over the past year.

Sen. Christiaens asked if the Legislative Fiscal Analyst and the Legislative Auditor will also be evaluated. Mr. Kerins said they will be evaluated in a similar fashion.

## **PROGRESS REPORT ON CODIFICATION**

Carol Ann Jacobsen, Chief Editor, updated members on the 2001 codification project. Codification is the process of assigning a section number to new sections of law enacted by the Legislature in order to incorporate them into the Montana Code Annotated. Since recodification was completed in 1978, LSD staff has codified the new laws rather than contracting with a company, such as Allen Smith, to do it. The past few years, LSD has also produced camera-ready copy, which saves a considerable amount of money.

Staff strives to have the new codes to customers by October 1 following a session because the vast majority of new laws take effect on that date unless a bill provides for a specific effective date, such as on passage and approval. In 1999, the codes were out in August. This year, staff will be hard-pressed to have them out by October 1. Ms. Jacobsen said she has worked for LSD for over 20 years and this is the most difficult codification she has ever been through. Many more bills are passing with termination dates, delayed effective dates, contingent effective dates, or contingent repealers. Such provisions require multiple versions of a section in the code books. Trying to keep track of whether or not contingencies have been met and determining what version will become effective if a contingency occurs is very complicated and requires a lot of time. Renumbering also requires time-consuming procedures at every step from the codifier through edit and data entry.

Ms. Menzies said the Montana Legislative Review is at the printers and will be delivered July 9-13. Session Laws are at the printers and will be delivered the week of August 6-10. The History and Final Status publication is at the printers and will be delivered July 23-27.

### **CLASS ACTION SUIT CHALLENGING ELECTRICAL DEREGULATION**

Exhibit #3 – memo to the Council from Valencia Lane, Staff Attorney, regarding Single Moms, Inc. v. MPC

Ms. Lane said recently a class action suit was filed challenging electrical deregulation. The suit names as defendants several legislators from the 1997 Legislature. Because there was not enough time to obtain Council approval for LSD legal staff to represent the legislative defendants, Greg Petesch and Ms. Lane worked with the Department of Justice to ensure that an appropriate response to the suit was timely filed. Mr. Petesch and Ms. Lane provided the brief in support of a motion to dismiss based on legislative immunity. The Department of Justice filed the motion and brief on behalf of the legislative defendants.

Ms. Lane said the issue of legislative immunity should be a "slam dunk" issue for the court to decide but there is no guarantee how the court will rule on the motion. Legislators should be out of the case as soon as the court has an opportunity to take briefs on all sides and rule on it. She suggested the Council allow staff to continue to coordinate with the Department of Justice in representation of the legislative defendants in this case. If the court rules against legislative immunity, the decision should be appealed immediately to the appellate court. If the suit proceeds, the defendant is asking \$5 million in damages. Ms. Lane noted that legislative immunity is a well-established concept under federal law and in other states.

Ms. Menzies said that she did not anticipate that LSD will need a supplemental appropriation to pay for this defense. Rep. Gillan asked that the Council be kept informed on the lawsuit.

Rep. Noennig moved that LSD legal staff continue to represent legislators named in the suit until the immunity issue is resolved and advise the Council on whether sanctions or legal fees ought to be sought to cover the cost of defense. The motion passed.

### **VISIT FROM KUMAMOTO LEGISLATIVE DELEGATION**

Mark Bison, Department of Commerce, said the Kumamoto legislative delegation will visit Helena in early August and would like to meet with a delegation of Montana legislators. In the past, legislative staff and some legislators have met with the delegation. The legislature usually hosts a lunch or dinner. Mr. Bison will work with the legislative staff to arrange hosting the Kumamoto delegation in August.

## **APPOINTMENTS TO INTERSTATE COMMITTEES AND PARTICIPATION IN INTERSTATE AND INTERNATIONAL ACTIVITIES**

### **Exhibit #4 – Appointments to Interstate Committees and Participation in Interstate and International Activities**

Rep. Gillan said she isn't aware of how appointments were done previously. Section 5-11-301, MCA, outlines the Legislative Council's statutory responsibilities regarding interstate and international activities. This is an issue the Council needs to revisit. Rep. Gillan suggested the Council be more involved in appointing representatives to participate in interstate and international activities.

Rep. Sliter said the statute is confusing because it states that it is a function of the Legislative Council, within the limits of appropriations, to establish delegations and committees; membership of the delegations and committees may consist of legislators and employees of the state other than members of the Council. He said "within the limits of appropriations" indicates that the Council can only establish such delegations if state money has been appropriated for this type of a delegation.

Chairman Beck said in the past there was money in the Legislative Council budget to send delegates to different functions. Most of that money has been taken away and that is why the Council has not designated anyone to attend functions.

In response to a question from Sen. Beck, Ms. Lane said there is a great deal of ambiguity in this statute. It can be read that if the Council doesn't have money to spend, it cannot make appointments. However, Ms. Lane said that it could be interpreted to mean that the Council has authority to make appointments and only if the Council sends members to attend meetings, then members must be paid. Payment doesn't necessarily need to be made from Council funds.

Ms. Lane suggested that the Council adopt an appointment policy today and follow this policy throughout the interim. Then the statute can be clarified through legislation next session.

Sen. Cole said the way appointments have been made in the past has been working. If leadership has the money, it should make the appointments.

Rep. Sliter moved that it be the policy of the Legislative Council that the first sentence of 5-11-301, MCA, be interpreted "that the travel funds be appropriated to the Legislative Services Division by the legislature" because historically that was the policy. With regard to leadership dollars, the policy will be that it is not the Council's business.

Rep. Gillan said she doesn't support the motion because the two issues, appointment and funding, are separate. For example, she may have the funds to send people to CSG West, but if she can't make the appointments, having the money doesn't do any good. Also these are supposed to be bipartisan groups but if a Democrat never gets appointed, they are not bipartisan.

Dave Bohyer, Director of the Office of Research & Policy Analysis, said the issue goes beyond whether the Minority Leader or the President of the Senate appoints somebody to NCSL. The law states the Legislative Council is the entity that appoints people to CSG or NCSL delegations. The Minority Leader does not appoint people to travel and participate as representatives of the Montana Legislature. About six years ago, there was about \$300,000 in the Legislative Council budget to send delegates to NCSL and CSG. However, the day after the Appropriations Committee reduced travel expenditures by 25% in the executive branch, the \$300,000 was taken from of the Council's budget.

Rep. Sliter withdrew his motion. What needs to be established is if the Speaker or Minority Leader wants to send someone to a function, this law ought not stand in the way. If it requires an appointment by this body so somebody can go to CSG West, the Council should not stand in the way.

Ms. Menzies reminded the Council that there are benefits to appointing legislators to interstate committees that do not involve travel. For example, a member of an interstate committee may receive publications and other materials through U.S. mail or electronic mail. It is regrettable that the Legislature does not take advantage of services included in the dues the Council pays to both NCSL and CSG. On occasion there are travel scholarships available from these organizations.

Sen. Cocchiarella moved that the Chairman appoint a subcommittee to study the issue of appointments to interstate committees and participation in interstate and international activities and present recommendations at the next meeting of the Council. The motion passed.

### **INTERIM COMMITTEE ITEMS**

#### **Exhibit #5 – Proposed Guidelines for Interim Committees**

##### **Proposal #1 - Agency bill draft request review process**

Mr. Bohyer said Proposal #1 is to formally establish September 15 prior to a regular legislative session as the deadline for completing interim committee work. The purpose for the September 15 deadline is to allow legislators to complete their interim committee work before the final surge of fall election campaigns. Completion of interim committee work also allows LSD staff to refocus their attention on bill drafting.

Chairman Beck asked what would happen if a committee needs to extend its work time. Mr. Bohyer said an interim committee could request that its deadline be extended, if necessary.

Rep. Sliter moved that September 15 prior to any regular legislative session be the deadline for completing interim committee work unless an extension is specifically authorized by a majority vote of the Council. The motion passed. Sen. Cocchiarella voted no.



Proposal #2 – Establish late-May of each even-numbered year as the guideline for receipt by interim committees of legislation requested by executive branch agencies or other entities

Mr. Bohyer said the Council has acted as the “requester” for executive branch agency bills. During the 2001 session, legislation was enacted requiring interim committees to review proposed agency legislation. The Legislative Council, in sponsoring this legislation, intended that the interim committees become the bill requesters. This proposal coincides with the time frame established by the Governor’s Office of Budget and Program Planning (OBPP) for agency submission of proposed legislation.

Budget Director Chuck Swysgood (Governor’s Office), said Ms. Menzies presented this proposal at a governor’s cabinet meeting. He said the proposal was received with mixed emotions. The executive is willing to cooperate to avoid the crunch of bill drafting just before session but is concerned about the separation of power as it relates to an interim committee being able to dictate a legislative agenda to the executive branch. He has no problem with an interim committee reviewing legislation. His concern is infringement on the executive’s ability to present legislation. Giving interim committees veto power over the executive’s legislation is not acceptable.

Ms. Menzies explained that the Legislative Council has served as the requester of executive agency legislation for the last two sessions. Before that, agencies had to find legislators to request the legislation in order to enter the bill drafting process. When the Council served as the requester of a bill without any review, LSD prepared numerous agency bills that were never introduced. In 2001, about 100 bill drafts were cancelled because agencies didn’t find sponsors. This proposal is an attempt to avoid drafting agency legislation that doesn’t go anywhere. The intent was to have committees, which by statute have monitoring responsibilities over agencies, do an initial review.

Rep. Sliter said he does not want to give interim committees the power to veto agency draft legislation. He suggested a subcommittee study this issue and report back at the next meeting.

Rep. Sliter moved that the Chairman appoint a subcommittee to study the proposed guidelines for interim committees, except for the previously approved proposal on the September deadline for completion of interim committee work. The subcommittee will also look at operating procedures for interim committees. The motion passed.

Request from Environmental Quality Council (EQC) for additional funds

Exhibit # 6 – memo from EQC to Chairman Beck

Larry Mitchell, Resource Policy Analyst for the Legislative Environmental Policy Office, said the Environmental Quality Council (EQC) is requesting a budget supplement for \$18,000 to schedule one extra meeting during the interim. EQC wants to add a meeting for a site visit and public involvement in eastern Montana for addressing coal bed methane and energy development issues.

Sen. Cole moved to allocate \$18,000 to EQC from the contingency fund. The motion passed. Rep. Sliter voted no.

### Judicial Redistricting Study

Exhibit #7 – Judicial Redistricting: Draft Study Plan prepared by Susan Fox

Ms. Menzies said that in May 1999, the Legislative Council assigned itself a study on redistricting the state's judicial districts. In September 2000, the Council accepted a recommendation from the district court judges not to redistrict at that time because of a proposal to transfer responsibility for district court funding to the state. Also, 30 judges were up for re-election. At its May 2001 meeting, the Council reaffirmed its interest in pursuing judicial redistricting.

Ms. Menzies said that Susan Fox, who staffed the judicial redistricting study, proposes that the Council appoint a subcommittee to take up the issue in the summer of 2002 and to consider recommendations from the district court judges at that time. If the Law and Justice Interim Committee considers judicial redistricting as part of its monitoring of SB 176 (state assumption of district court costs), the Council can decide whether it is necessary to act independently. Ms. Fox is meeting with the judges today in Bozeman and will suggest they consider redistricting possibilities over the next 12 months and bring recommendations to the Council. The judges will also be asked to appoint a liaison to work with Council staff.

### APPOINTMENT OF UNIFORM STATE LAW COMMISSIONERS

Exhibit # 8 – Appointments of Uniform State Law Commissioners prepared by Lois Menzies

Ms. Menzies said the Council is required under 1-12-101, MCA, to appoint three members to four-year terms on the Commission on Uniform State Laws. The terms for the current commissioners, Joe Mazurek, Ed Eck (Dean of U of M Law School), and Justice James Nelson expire July 2001. Each commissioner wishes to be reappointed.

Rep. Sliter moved that Mazurek, Eck, and Nelson be reappointed as Uniform State Law Commissioners. The motion passed.

### SESSION SURVEY RESULTS

Attachment #2 – Montana LSD Results of Committee Staff Evaluation Survey and Results of Legislator Survey of Session Services

Ms. Menzies said a legislator survey is conducted at the end of each session to get a sense of how staff is doing and to identify areas that may need improving. The survey results were overwhelmingly favorable of staff services although the availability of computer technology services was cited as an area in need of improvement.

Legislators ranked staff services as being between the "excellent" to "very good" range.

The results of the Committee Staff Services Survey were also positive. Ms. Menzies said staff appears to be fulfilling the needs of legislators at the committee level.

### **LSD OFFICE AND STORAGE ISSUES**

Ms. Menzies said the Council is required by statute to consult with and advise the Department of Administration (D of A) concerning assignment of space in the Capitol. Also, the Council serves as a long-range building committee to recommend to the Legislature and D of A construction and remodeling priorities for the Capitol.

Ms. Menzies said LSD has inadequate space for storage and offices. Capitol restoration has caused some reduction in work areas. Storage closets will be built in the east wing basement, which will enable LSD to move all items out of the Federal Building and into the Capitol. LSD will then be able to get rid of the leased van from the Motor Pool that was needed to go back and forth to the federal building.

Office space is a more difficult problem. Currently 20 people are working in the basement. Ms. Menzies wants to get some of them above ground.

Chairman Beck said this issue will be discussed at tomorrow's strategic planning session.

### **MONTANA JUDICIAL EDUCATION PROGRAM LEGISLATOR PARTICIPATION**

Ms. Menzies said the Supreme Court received grant money from the State Justice Institute to develop an integrated and unified plan for judicial education in Montana. The project would like the advisory participation of one or two legislators familiar with the Montana judiciary. These legislators would advise the project governing board on gaining legislative support for the education. The project will pay travel costs, and the Council is being asked to provide funding for legislators' salaries.

Sen. Cocchiarella asked why the Supreme Court wants legislators involved in their training process.

Ms. Menzies said the Court is looking for advice on how to gain support and funding for this proposal in the 2003 legislature. Ms. Menzies said that the Court could present its proposal to the Law and Justice Interim Committee at no additional cost to the Council.

Rep. Sliter moved that payment of legislator's salaries not be authorized but that the project seek the advice of the Law and Justice Interim Committee. The motion passed.

Ms. Menzies said she would contact the project director to report the action of the Council.

## **STRATEGIC PLANNING SESSION**

Exhibit #9 – Agenda for Strategic Planning Session

Ms. Menzies distributed an agenda for the Strategic Planning Session scheduled for Tuesday, June 26, 2001.

## **ADJOURNMENT**

The next meeting is scheduled for Friday, September 21, 2001. The meeting adjourned at 5:20 p.m.

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